

AN INTRODUCTION TO THE INTERNATIONAL PROTECTION OF REFUGEES (RLD 1)

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INTRODUCTION

The purpose of this module

It is generally known that UNHCR's primary task is to provide international protection to refugees. This is a unique responsibility that is not entrusted to any other international agency. It is therefore important that all UNHCR staff should be aware of what this task involves. The purpose of this module is to respond to this need, and to demonstrate that the subject of international protection is not one that is only accessible to specialized staff. Understanding the basic issues is within reach of non-specialists.

What the module contains

The module falls into five sections. Each section seeks to answer the following questions:

- How international protection of refugees began and developed?
- What is meant by international refugee law?
- To whom does UNHCR extend protection?
- What is the link between refugees and human rights?
- What does protection mean in practice?

Who will use the module?

As mentioned earlier, the answers to all these questions are of general interest to all staff. They are, of course, of specific interest to staff directly concerned with protection issues, especially in field offices.

The staff of operational partners – both Governments and non-governmental organizations – may also draw benefit from its contents. In countries where UNHCR is not represented, the UN agency acting on our behalf should also be familiar with its contents.

Other relevant materials

For the sake of brevity, this module does not contain any lengthy quotations from legal texts. These can be found within the Collection of legal instruments, to which reference is made as appropriate. The collection of Conclusions adopted by the Executive Committee is another useful reference source to have at hand.

You may also wish to consult other training materials being produced as part of this series. They include training modules on the following subjects:

- determination of refugee status;
- interviewing refugees for refugee status;
- determination of refugee status (advanced level).

Training videos are also available. They include one on refugee status, and one on protection issues as they relate to refugee women. All of these materials are available from the Training Resource Centre.

How to use the module

This module is designed:

- as a basis for briefings and training sessions (it is accompanied by a Trainer's Guide for this purpose);
- for self-teaching. Each chapter begins with learning objectives, and ends with a simple review of the basic issues. You are encouraged to test yourself by completing this review, and checking your answers against the answer key at the end of the module. You will also find a case study as part of Chapter 5, of which an analysis is also provided.

Chapter 1 The international protection of refugees: how it all began and developed

In this Chapter you will learn:

- what major events marked the development of the international protection of refugees (as from the end of World War I);
- the importance of the work of the International Refugee Organization (IRO);
- how UNHCR was created;
- which early texts were significant in embodying the universal concept of refugees;
- the essential contents of UNHCR's Statute.

1. A brief history

Refugees have been around as long as history, but an awareness of the responsibility of the international community to provide them protection, and help them to solve their problems, dates only from the time of the League of Nations. In this Chapter, we shall be tracing this development.

Where it all began

The first demonstration of this international solidarity emerged after World War I, to deal with mass movements linked mainly to:

- the revolution in Russia;
- the collapse of the Ottoman Empire.

Office of the High Commissioner for Russian Refugees

Dr. Fridtjof Nansen was elected by the League of Nations in 1921 as High Commissioner for Russian refugees. His tasks were:

- to define their legal status;
- to organize their repatriation or "allocation" to countries able to receive;
- to undertake relief work with the aid of "philanthropic agencies".

His mandate was later extended to other groups of refugees:

- Armenians (1924).
- Assyrian, Assyro-Chaldean and Turkish (1928).

Landmarks in the 1930's

In the troubled years preceding the outbreak of World War II, several more developments took place:

- the *International Nansen Office for Refugees* was created after Nansen's death in 1931, as an autonomous body under the authority of the League. It was concerned with humanitarian, relief work, and went into liquidation as from the end of 1938;
- a *High Commissioner for Refugees coming from Germany* was appointed in 1933, following Hitler's rise to power. This Office was liquidated in 1938, at the same time as the International Nansen Office;
- a *High Commissioner for Refugees* was appointed in 1938 by the League of Nations, with headquarters in London. It amalgamated the two bodies listed above. Its role was very limited, and ended in 1946;
- the *Intergovernmental Committee on Refugees* was also created in 1938, following a conference in Evian on "the question of involuntary emigration" from Germany and Austria. The work of this Committee was extended in the course of World War II to all refugee groups. It was replaced in 1947 by the International Refugee Organization (see below).

The trauma of World War II

In the dark years of World War II, several million people were forcibly displaced, deported or resettled.

United Nations Relief and Rehabilitation Administration (UNRRA)

This organization was created by the Allies in 1943. It organized the return of several million people to their countries or areas of origin. Many others, however, were increasingly reluctant to return to States where new political ideologies now reigned. Their reluctance signalled the emergence of a major refugee problem that would dominate the post-war years.

Bermuda Conference

This Conference, which took place in 1943, extended the mandate of the Intergovernmental Committee to "all persons wherever they may be who, as a result of events in Europe, have had to leave their countries of residence because of the danger to their lives or liberties on account of their race, religion or political beliefs".

United Nations Organization

The refugee problem was included as a priority item on the agenda of the first session of the General Assembly, in 1946. The action required was to be based on the following principles:

- the refugee problem was international in scope and character;
- no refugees or displaced persons who had finally, and in complete freedom expressed valid objections to returning to their country of origin should be compelled to return;
- the future of such refugees and displaced persons should be the concern of an international body to be established; and
- the main task was to encourage and assist in any way possible their early return to their countries.

International Refugee Organization (IRO)

This intergovernmental organization was created in 1947, as a specialized agency of the United Nations to deal with the residual problem of refugees, left after World War II. It was the first international agency

to deal comprehensively with every aspect of refugee problems: registration, determination of status, repatriation, resettlement, “legal and political protection”. It continued its activities until 1951.

Although *repatriation* was initially its main objective, political developments in post-war Europe shifted the balance towards *resettlement*. The IRO developed basic standards for dealing with large-scale migration, and showed what could be achieved through a co-ordinated effort within the framework of an international agency.

However, operating as it did in a period of heightening East-West tension, the IRO was severely attacked by States who claimed that repatriation was the ideal solution, and that resettlement was a means of acquiring a ready source of manpower, or offering shelter for subversive groups who might threaten world peace. Moreover, the resettlement of large numbers of refugees was a costly operation, funded by only eighteen of the fifty-four governments then members of the United Nations.

At the same time, however, it became clear that even after the settlement of the immediate post-war refugee problem, continuing international action was going to be needed.

These various elements all had their importance in shaping the events to come.

Creation of UNHCR

For the various reasons mentioned above, there was opposition to prolonging the activities of the IRO. Some States were opposed to *any* further UN involvement in refugee questions. Several others were keen to ensure that any new body would not be involved in direct *operational* activities comparable to those of the IRO.

Heated discussions took place between those who argued for broad responsibilities, and those who favoured an agency with limited competence. Though compromises were made, those who pleaded for a broad *protection* mandate, with a more limited mandate in the field of assistance, won the day. In December 1949(1), the General Assembly, by thirty-six votes to five with eleven abstentions, decided to establish UNHCR for an initial period of three years, beginning on 1 January 1951, as a subsidiary organ of the General Assembly under Article 22 of the United Nations Charter.

You will find details of UNHCR's relations with other parts of the UN system within the pages of training module OHC 2. What follows is a summary of the most important features:

- the High Commissioner is elected by the General Assembly, on the nomination of the Secretary-General;
- he reports annually to the General Assembly through the Economic and Social Council (ECOSOC), and receives policy directives from these two bodies only;
- these direct links to the General Assembly and ECOSOC are intended to allow the High Commissioner the degree of independence needed to perform effectively his tasks, notably that of protection;
- unlike other UN institutions, UNHCR has no formal governing board or authority (the Executive Committee later created in 1957 is responsible for approving his annual assistance programmes, and advising him, at his request, on the exercise of his functions, including international protection);
- according to the Statute, UNHCR's primary task is to provide international protection, while the area of material assistance was a more limited one. It was, however, extended by later General Assembly resolutions.

2. Towards a universal refugee concept

The early days

Under the League of Nations, various *ad hoc* Arrangements and Conventions were adopted relating to specific categories of refugees. The most significant are listed below.

Arrangement of 1926, concerning the issue of certificates of identity to refugees for use as travel documents. These came to be known world-wide as the *Nansen Passports*. They had originally been created for Russian refugees in 1922, and were extended to Armenian refugees by the Arrangement of 31 May 1924. Under the Arrangement of 1926, the Nansen passport was, in principle, also valid for a return to the issuing country.

Arrangement of 1928, extended the Nansen certificate arrangements to Assyrian, Assyro-Chaldean and Turkish refugees. It also recommended that the services normally extended to nationals abroad by consulates of their home country, should in the case of refugees be provided by the High Commissioner's representatives.

Convention Relating to the International Status of Refugees (1933), which became a model for future international instruments. It consolidated the previous arrangements and contained comprehensive provisions on matters such as personal status, employment, social rights, and education. It also restricted the practice of expulsion. Unfortunately, it received only eight ratifications.

Convention Concerning the Status of Refugees from Germany (1938), with provisions similar to those of the 1933 Convention. These were subsequently extended to refugees coming from Austria, by means of the 1939 Protocol.

Important as they were as first steps in the development of international refugee law, these various texts had certain limitations:

- the Arrangements were recommendations, with no binding legal force;
- they were not generally and consistently applied;
- the Conventions were ratified by very few States, mostly with reservations.

Constitution of the International Refugee Organization (1947)

This was an important step in the development of international refugee law. Like the earlier arrangements, it specified certain categories to be assisted. But they were no longer exclusively national groups. They included:

- victims of Nazi, Fascist or Quisling (traitor) regimes which had opposed the Allies;
- Saar and Sudetenland refugees;
- persons considered as refugees before the outbreak of World War II for reasons of race, religion, nationality or political opinion;
- persons outside their country of nationality or former habitual residence who, as a result of events subsequent to the outbreak of the Second World War, were unable or unwilling to avail themselves of the protection of the Government of that country;
- unaccompanied children who were war orphans or whose parents had disappeared.

In addition to refugees, the IRO was competent to assist "displaced persons". These were persons who had been obliged to leave their countries, some of them compelled to undertake forced labour, while others were deported for racial, religious or political reasons.

Refugees and displaced persons became the concern of the IRO if they could be repatriated, and needed the help of the Organization for this purpose, or if they expressed "valid objections" to returning

to their country of origin. Such “valid objections” included persecution or fear of persecution because of race, religion, nationality or political opinions.

It was during the lifetime of the IRO that discussions took place which led to the 1951 Convention relating to the Status of Refugees, and the Statute of UNHCR.

3. Statute of UNHCR (1950)

This instrument was adopted by the General Assembly, in Annex to Resolution 428 (V), in December 1950. UNHCR came into existence as from January 1951. The Statute contains three chapters, as follows:

I. GENERAL PROVISIONS

□ The High Commissioner’s function is defined as being that

“... of *providing international protection*, under the auspices of the United Nations, to refugees who fall within the scope of the present Statute and of *seeking permanent solutions* for the problem of refugees by assisting Governments and, subject to the approval of the Governments concerned, private organizations to facilitate the voluntary repatriation of such refugees, or their assimilation within new national communities”.

- His work is qualified as “entirely non-political”, “humanitarian and social”.
- The High Commissioner must follow policy directives given him by the General Assembly or the Economic and Social Council.
- UNHCR is a temporary institution. It was originally established for a period of three years. Thereafter it was extended for successive periods of five years up to the present time. This reflects the hope – unfortunately not justified by events – that the refugee problem is of a transitory nature.

II. FUNCTIONS OF THE HIGH COMMISSIONER

This chapter of the Statute:

- defines the persons who are of concern to the High Commissioner;
- specifies the various tasks which the High Commissioner is required to carry out in the exercise of his duties.

□ Refugee definition

The definition of persons to whom the competence of the High Commissioner extends is similar (though not identical) to the definition of refugee contained in the 1951 Refugee Convention. We shall be examining this definition in a subsequent chapter.

□ The High Commissioner’s tasks

The Statute lists nine specific activities in the context of his protection function. They are summarized as follows:

- to promote the conclusions and ratification of international conventions, supervising their application and proposing amendments;
- to promote measures to improve the situation of refugees and reduce the number requiring protection;

- to assist efforts to promote voluntary repatriation or local settlement;
- to promote the admission of refugees to the territories of States;
- to facilitate the transfer of refugees' assets;
- to obtain from Governments information concerning refugee numbers and conditions, and relevant laws and regulations;
- to keep in touch with Governments and inter-governmental organizations;
- to establish contact with private organizations;
- to facilitate the co-ordination of their efforts.

This chapter also defines the High Commissioner's relations with other UN organs, and sets limits on his activities in the field of assistance.

III. ORGANIZATION AND FINANCES

Essential aspects of the administration of the High Commissioner's Office are contained in this third and final chapter. They include:

- arrangements for his election;
- his choice of staff;
- appointment of his representatives in countries where refugees are located;
- the financing of his activities.

In the chapter that follows, we shall be looking at the significance of the 1951 Convention relating to the Status of Refugees, as the cornerstone of international refugee law. It is useful to remind ourselves, at this stage, of the essential differences between the Statute and the Convention.

Essential differences

The Statute
serves as UNHCR's constitution. It sets forth the High Commissioner's functions and responsibilities, and includes a definition of persons who are his concern.

The Convention
is an international treaty which is binding upon the signatory States. It specifies the rights to be accorded to persons who are recognized as refugees according to the definition contained in the Convention.

Mandate refugees
this term is used for persons considered by UNHCR to be refugees according to the Statute. This determination is not dependent upon the State of asylum being

party to the 1951 Convention or 1967 Protocol (see below). Mandate refugees can benefit from the High Commissioner's action. They do not, however, benefit from the rights accorded to Convention refugees, unless also recognized as refugees by a State party to the Convention. This term is also used for refugees under the broader competences as later conferred on the High Commissioner by the General Assembly.

Convention refugees
these are persons determined to be refugees by the authorities of States that have acceded to the Convention and/or Protocol. As such, they are entitled to claim the rights and benefits which those States have undertaken to accord to refugees.

Chapter 1 Review

1 A number of *ad hoc* Arrangements were adopted under the League of Nations.

Did they concern:

refugees in general? specific refugee groups?

Were these Arrangements:

binding? non-binding?

Put a tick against the correct answers.

2 An organization was created during World War II that organized the return of several million people who were displaced as result of the conflict.

What was its name?



3 When was the IRO created, and what was the significance of its work?



4 The IRO was authorized to assist

only refugees

only displaced persons

both categories.

Put a tick against the correct answer.

5 UNHCR's Statute, adopted in 1950, defines the High Commissioner's function. The following is a quotation from Chapter 1 of the Statute.

Add the missing words:

"The United Nations High Commissioner for refugees, acting under the authority of the General Assembly, shall assume the function of under the auspices of the United Nations, to refugees who fall within the scope of the present statute and of for the problem of refugees by assisting Governments and, subject to the approval of the Government concerned, private organizations to facilitate the voluntary repatriation of such refugees, or their assimilation within new national communities

Chapter 2 A brief introduction to international refugee law

In this Chapter you will learn:

- the significance of the 1951 Convention and 1967 Protocol;
- which other texts are of importance for refugees (including regional instruments);
- the nature and importance of the Conclusions on the international protection of refugees, adopted by the Executive Committee of the High Commissioner's Programme.

International refugee law mainly comprises international instruments that define basic standards for the treatment of refugees. In this chapter we shall be looking briefly at the texts of major significance. The purpose is not to cover all relevant instruments, nor to go into great detail. You can find the full texts in the Collection of International Instruments concerning Refugees, published by UNHCR in 1979, of which copies may be obtained from UNHCR's Centre for Documentation on Refugees.

International refugee law, like humanitarian law, is in fact a branch of human rights law. It was developed to protect human beings in specific circumstances (i.e. in situations of possible persecution and in armed conflicts). Human rights law (which we touch upon in Chapter 4) actually developed later, but it is important to perceive refugee protection and refugee law as part of the human rights context.

It is also important to note, before we begin our review, that not all States are signatories to the international instruments protecting refugees. However, the general principles of law apply universally. A number of important countries that have not yet signed the 1951 Convention (such as Pakistan or Thailand) still host large numbers of refugees, and respect the principles of international refugee law, especially the principle of non-refoulement.

1. The 1951 Convention Relating to the Status of Refugees

The preparation of the Convention took place from 1947 to 1950, following a recommendation of the UN Human Rights Commission that early consideration be given to the "legal status of persons who do not enjoy the protection of any government".

This work took place while the IRO pursued its activities, and while East-West tension increased, accompanied by a persistent flow of refugees.

The significance of the Convention

The Convention was a major achievement in international refugee law since:

- it contained a general definition of the term “refugee” (Article 1);
- it embodied the principle of “*non-refoulement*” (Article 33) according to which no person may be returned to a territory where he may be exposed to persecution;
- it sets the minimum standard of treatment of refugees, including the basic rights to be granted, and the duties of refugees vis-à-vis their country of refuge;
- it contained provisions that concern their juridical status, gainful employment and welfare;
- it contained provisions regarding the issue of identity and travel documents, naturalization, and other administrative matters;
- it required States to co-operate with UNHCR in the exercise of its functions, and to facilitate the task of supervising the application of the Convention.

The limitations on the Convention’s scope

At the time when the Convention was adopted, States were anxious to focus on the existing refugee problems, and not to assume obligations for the future, the extent of which could not be foreseen. This resulted in two major limitations:

❑ The 1951 dateline

The benefits of the Convention were not to apply to persons who corresponded to the definition, but who became refugees as a result of events occurring after 1 January 1951 (Article 1).

❑ The geographical limitation

The events just referred to could be understood to mean

either

“events occurring in Europe before 1 January 1951”;

or

“events occurring in Europe or elsewhere before 1 January 1951”.

When becoming a party to the Convention, States had the possibility of making a declaration, limiting their obligations under the Convention to European refugees.

1967 Protocol Relating to the Status of Refugees

We have just seen that the Convention concerned persons who were refugees because of events occurring before 1951. The years that followed showed that the movement of refugees was not a phenomenon that was confined to World War II and its aftermath. New refugee groups emerged, particularly in Africa, throughout the late fifties and the sixties. It therefore became necessary to make the Convention applicable in all such new refugee situations. For this purpose, the 1951 dateline was removed by the 1967 Protocol, giving the Convention a truly universal character.

The Protocol is an *independent instrument* to which States may accede without becoming parties to the

Convention (although this rarely happens). States which accede to the Protocol undertake to apply the provisions of the Convention to refugees who meet the Convention definition, but without the 1951 dateline. If a State accedes to the Protocol alone, there is no possibility of introducing a geographical limitation.

Reservations

When acceding to the Convention and/or Protocol, States may make reservations to articles which they feel unable to apply. There are, however, certain articles to which no reservations are permitted, and which acceding States must therefore accept. They are as follows:

- Article 1 (refugee definition).
- Article 3 (non-discrimination as to race, religion or country of origin).
- Article 4 (freedom to practise religion).
- Article 16 (1) (free access to courts).
- Article 33 (non-refoulement).
- Articles 36-46 (information on national legislation; final clauses). 1(2)

Accessions to the Convention and Protocol

In the early years, the parties to the Convention were relatively few. Six instruments of ratification or accession were required for the Convention to come into force. This did not occur until April 1954.

Since then, the number of accessions to the Convention and Protocol has grown to over one hundred. As we have seen from the tasks listed in the Statute, one of the High Commissioner's major protection tasks is to encourage States to accede to international instruments for the protection of refugees, and to supervise their application. This is an on-going task.

2. Other instruments of universal scope

A number of texts, though not specifically of concern to refugees, may be of relevance to refugees in certain circumstances. Those mentioned below are the most significant.

- The *Convention Relating to the Status of Stateless Persons* (1954) defines the standards of treatment to be accorded to stateless persons, which are broadly speaking the same as those for refugees.
- The *Convention on the Reduction of Statelessness* (1961) seeks mainly to avoid statelessness at birth, by granting the nationality of the acceding State to persons born in their territory who would otherwise be stateless. It also provides, subject to certain exceptions, that a person shall not be deprived of his/her nationality if this would result in making them stateless, and specifies that a person shall not be deprived of his/her nationality on racial, religious or political grounds.
- The Fourth *Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (1949) contains an article (44) dealing with refugees and displaced persons. The Protocol Additional (1977) provides specifically (Article 73) that refugees and stateless persons shall be protected persons under the meaning of Parts I and III of the fourth Geneva Convention.
- The *United Nations Declaration on Territorial Asylum* (1967), unanimously adopted by the General Assembly, recalls Articles 13 and 14 of the Universal Declaration of Human Rights, and states the principle of *non-refoulement* in broad terms including non-rejection at the frontier. It also recognizes that the granting of asylum by a State is a peaceful and humanitarian act, that cannot

be regarded as unfriendly by another State.

3. Regional instruments

Africa

The *OAU Convention Governing the Specific Aspects of Refugee Problems in Africa*, adopted in 1969, is of major importance for several reasons. It contains a broadened refugee definition (as we shall see in the next chapter) and important provisions relating *inter alia* to asylum (Article II), voluntary repatriation (Article V), and to the prohibition of subversive activities by refugees (Article III). It also provides (Article VIII) that the Convention shall be the effective regional complement in Africa to the 1951 UN Convention relating to the Status of Refugees.

Europe

Several instruments concerning refugees have been adopted within the framework of European institutions. The most significant are listed below.

□ Council of Europe

- Agreement on the Abolition of Visas for Refugees (1959).
- Agreement on the Transfer of Responsibility for Refugees (1980).
- Resolution on Asylum to Persons in Danger of Persecution (1967).
- Recommendation on the Harmonization of National Procedures Relating to Asylum (1981).
- Recommendation on the Protection of Persons not Formally Recognized as Refugees under the 1951 Convention (1984).

Provisions of concern to refugees also figure in the European Conventions on Extradition and Social Security.

□ European Community

- Regulation No 1408/71 on Social Security of Migrant Workers.
- Dublin Convention (1990), which lays down criteria for determining which Member State is responsible for examining an asylum request when the applicant has passed through one or more member States of the Community.
- Schengen Agreement (1990), signed by the Benelux countries, Germany and France, which contains similar criteria to the Dublin Convention, within the context of the progressive abolition of frontier controls between countries of the Community.

Latin America

Political asylum has a long history in Latin America. The first texts date back to the late nineteenth century (Montevideo Convention). Since then, a series of other instruments has followed on territorial and diplomatic asylum. One of the most recent is the 1984 *Cartagena Declaration*, to which we shall be referring in due course.

4. Conclusions of the Executive Committee

It is important to distinguish between international instruments, such as the 1951 Convention and 1967

Protocol, which have force of law for the signatory States, and other texts (declarations, resolutions, recommendations, etc.) which express an international consensus, but are not legally binding. The conclusions of the Executive Committee belong to the latter category.

You will recall that the Executive Committee of the High Commissioner's Programme was created in 1958. Its essential tasks are:

- ❑ to approve the High Commissioner's annual assistance programmes;
- ❑ to advise the High Commissioner, at his request, in the exercise of his statutory functions (notably international protection).

International protection is included as a priority item on the agenda of each session of the Executive Committee. The consensus reached by the Committee in the course of its discussion is expressed in the form of a general Conclusion.

Sub-Committee of the Whole on International Protection

With the growing complexity of the High Commissioner's work in the protection field, it was decided in 1975 to create a Sub-Committee which would "study in more detail some of the more technical aspects of the protection of refugees".

The Sub-Committee meets each year, immediately before the plenary session of the Executive Committee, and discusses specific protection issues. The conclusions it adopts are later submitted to the plenary Committee for endorsement.

Over the years, the Executive Committee has adopted conclusions on a wide range of subjects. They include:

- issues of general concern (international instruments, asylum, "*non-refoulement*", expulsion, determination of refugee status, family reunion, travel documents, voluntary repatriation, unfounded or abusive applications for refugee status or asylum, detention of refugees and asylum-seekers, refugees without an asylum country, etc.);
- the protection needs of specific groups (refugee women, refugee children, etc.);
- problems arising in various critical protection situations (military or armed attacks on refugee camps and settlements; rescue of asylum-seekers at sea, etc.).

A complete collection of the Conclusions may be obtained from the Centre for Documentation on Refugees.

The importance of these Conclusions

Although as we have seen, the Conclusions are not binding on States, they have come to be considered as making a positive contribution to the development of international refugee law. They serve, *inter alia*:

- to focus attention on protection issues, identifying existing short-comings;
- to reflect a consensus reached in a unique international forum;
- to propose appropriate remedies and guide governmental authorities on their course of action.

Chapter 2 Review

1

International refugee law comprises legal instruments with a common, major feature.

What is it?



2 The scope of the 1951 Convention was initially limited in two ways.

What were they?



3 Which of the two limitations was removed by the 1967 Protocol?



4 States may only sign the 1967 Protocol if they are already parties to the 1951 Convention.

TRUE FALSE

Which is correct?

5 Acceding States are not able to express reservations to certain articles of the Convention and Protocol. The list below is incomplete. Two articles are missing.

Which are they?

- Article 1 (ref. definition).
- Article 3 (non-discrimination as to race, religion or country of origin).
- Article 4 (freedom to practise religion).
- Article 16 (free access to courts).
- Articles 33 (non refoulant).
- Articles 36-46 (information on national legislation; final clauses).

6 The conclusions on the international protection of refugees, adopted by the Executive Committee cover a wide range of protection issues. This module identifies three ways in which these Conclusions are significant.

What are they ?



Chapter 3 Who is a refugee?

In this Chapter you will learn:

- the essential elements of the Convention definition of a refugee;
- the definition as contained in the OAU Convention (and Cartagena Declaration);
- how the concept of persons of concern to the High Commissioner has evolved over time.

The question as to which persons are of concern to the international community as refugees has always been of crucial importance.

1. The Convention definition

It is not the intention in this chapter to analyse in detail the refugee definition as contained in the Convention and the UNHCR Statute. This subject is treated in the training modules on the determination of refugee status (RLD 2 and 3), which also describe how the determination process takes place.

To be a refugee, four basic conditions must be met. The applicant must be:

- outside his/her country of origin;
- have a well-founded fear of persecution;
- this fear must be based on one of five grounds:
 - race
 - religion
 - nationality
 - membership of a particular social group,¹ (3) or
 - political opinion
- unable or unwilling to avail himself of the protection of that country, or to return there, for reasons of fear of persecution.

The Convention also specifies the circumstances in which refugee status does not apply, or ceases to apply.

☐ The **exclusions clauses** stipulate that the Convention shall not apply to persons who meet the inclusion criteria, but who do not need or deserve protection. This would apply to:

- a person receiving protection or assistance from organs or agencies of the United Nations other than UNHCR;
- a person benefiting from the same rights and obligations as nationals of the country in which he has taken residence;
- a person who has committed a crime against peace, a war crime or a crime against humanity; a serious, commonlaw crime prior to admission to the country of asylum; or an act contrary to the purposes and principles of the United Nations.

Palestine refugees

The first of the exclusion clauses listed above was intended to allow Palestine refugees to continue to be dealt with as a separate refugee problem. The task of providing for these refugees fell to the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), established by the UN General Assembly in December 1948. This Agency provides assistance to Palestine refugees in

Jordan, Lebanon, Syria and Israeli-occupied territories. It must be noted, however, that when Palestine refugees are outside the UNRWA area of operations, they fall within UNHCR's mandate, like any other refugees.

- ❑ The so-called **cessation clauses** stipulate that a person shall no longer be considered a refugee if, for example, there has been a fundamental change of political circumstances in the country of origin, enabling him to take up renewed residence there. A recent example was that of the application of the cessation clauses to refugees from Poland, former Czechoslovakia and Hungary.

An essential difference between the exclusion and cessation clauses is that the exclusion may be applied *during* the determination process. Cessation, on the other hand, may be applied *after* the person has been recognized as a refugee.

2. "Refugee" according to regional instruments

The OAU definition

The conflicts which accompanied the ending of the colonial era in Africa led to a succession of large-scale refugee movements. As early as 1963, the Organization of African Unity (OAU) determined that a regional refugee Convention was needed, which would take account of the specific aspects of the refugee problems encountered in that continent.

The text of the new Convention was adopted in 1969. It referred to the 1951 Convention as "the basic and universal instrument relating to the status of refugees". The new Convention was not intended to supersede, but to complement it.

The OAU refugee definition is in two parts:

- the first repeats the definition of the 1951 Convention;
- the second goes further. It covers any persons compelled to leave his or her country

"owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality".

This was an important addition. It meant that persons fleeing civil disturbances, violence and war are entitled to claim the status of refugee in States that are parties to this Convention, irrespective of whether or not they have a well-founded fear of persecution.

Cartagena Declaration

There is no other regional convention comparable to the OAU Convention. However, in 1984, UNHCR convened a Colloquium, composed of government representatives and distinguished Latin American jurists, which met in Cartagena, Colombia. This Colloquium adopted an important declaration, referred to as the Cartagena Declaration, which recommended *inter alia* that the definition of refugee to be used in the region should also include persons who have fled their country

"because their lives, safety or freedom have been threatened

by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order".

This definition is similar to that of the OAU Convention. Though not formally binding on States, it is applied in practice by a number of Latin American States, and has been incorporated into the national legislation of some of them. It has also been endorsed by the Executive Committee, the Organization of American States (OAS) and the UN General Assembly.

3. Evolution of the concept of "persons of concern" to the High Commissioner

The notion of "persons of concern" to the High Commissioner has evolved beyond the definition contained in the 1951 Statute, moving with the tide of events in various parts of the globe. As we have already mentioned, the world today is very different from the world in which UNHCR's Statute was drafted. Many changes have taken place and will continue to take place. This has necessitated a degree of flexibility in order to respond to new needs which has implied a broadening of certain concepts.

This evolution has been acknowledged by the international community, mainly in the form of resolutions and decisions adopted by the UN General Assembly and the Economic and Social Council.

Landmarks in the evolution

What follows makes no claim to trace each and every event which has contributed to the process we have just referred to, but we shall focus on what may be considered the most significant developments.

The group approach (*prima facie* determination)

The large-scale refugee movements in Africa in the 1960's called for a pragmatic approach to the determination of refugee status. In these situations it was impracticable to screen each individual belonging to the group in order to establish whether he or she had a well-founded fear of persecution. Recourse was therefore had to what is known as a *prima facie* group determination of refugee status. These groups were considered to be "refugee groups" in the light of the circumstances which had led to departure from the country of origin. Individual members were considered *prima facie* as refugees. This form of determination soon became regular practice, especially in precarious situations in which rapid action was essential. It implied a more flexible application of the refugee concept, based on the objective conditions in the country of origin leading to flight, rather than an individual screening.

"Good offices"

At the end of the 1950's, the High Commissioner was authorized to use his "good offices" for the transmission of contributions to refugees who did not come under the competence of the United Nations. This applied in particular to Chinese refugees in Hong Kong, who for legal reasons (the existence of the two Chinas) could not be determined to be refugees.

In a series of General Assembly resolutions adopted in the 1960's, the High Commissioner was authorized to provide assistance to refugees falling within his competence on the basis of his "good offices". The refugees assisted in this way were considered as falling within the definition of the Statute, on the basis of a *prima facie* group determination. In practice the High Commissioner applied broader humanitarian criteria, not limited to fear of persecution, in determining which groups of persons could be assisted as "good offices" refugees.

“Displaced persons”

You may recall that, whereas this term appeared in the Constitution of the IRO, it did not appear in the Statute of UNHCR. Yet the term “displaced persons of concern to UNHCR” appeared in various General Assembly resolutions adopted as from 1975. These resolutions authorized the High Commissioner to assist and protect persons displaced outside their country of origin who might not strictly fulfil the refugee definition, but who found themselves in a “refugee-like situation” due to events (sometimes referred to as “man-made disasters”) arising in their country of origin. Such events have generally been understood to correspond to those enumerated in the wider definitions contained in the OAU Refugee Convention and the Cartagena Declaration.

UNHCR’s “humanitarian expertise”

On several occasions, UNHCR has been called upon to participate at the invitation of the General Assembly, or the UN Secretary-General, in those humanitarian endeavours of the United Nations in which UNHCR has particular expertise and experience. On this basis, the High Commissioner could assist persons displaced within their own country who, for this reason, could not be considered either as refugees or as displaced persons in a refugee-like situation. Thus in 1972, the General Assembly recognized the need for continued humanitarian assistance to persons displaced within the Indo-Chinese peninsula. After the 1975 events in Cyprus, the High Commissioner was requested by the Secretary-General to co-ordinate humanitarian assistance to displaced persons there. Other examples include special operations conducted by UNHCR to provide humanitarian assistance in Bangladesh, Lebanon, the Horn of Africa, Nicaragua and Uganda.

Returnees

Formally speaking, refugees who return voluntarily to their country of origin cease to be refugees as soon as they cross the border. Yet in past years, UNHCR has been called upon by the General Assembly to assist returnees as part of voluntary repatriation operations. As from 1973, this request has been contained each year in the Resolution adopted by the General Assembly on the annual activities of the Office, and in Resolutions on assistance to specific groups of refugees. In principle, UNHCR’s protection responsibilities cease as from the moment that the country of origin assumes this responsibility for its returning nationals. In practice, however, it may be called upon to assume a monitoring role for a limited period, in close consultation with the parties concerned. This role has been acknowledged and supported by the Executive Committee in various Conclusions, notably Conclusion No 40 (XXXVI) which refers to the High Commissioner’s legitimate concern for the consequences of return.

Application of broader refugee notions under national legislation

As we have seen above, the refugee concept as defined in the 1951 Convention, the 1967 Protocol and the UNHCR Statute has been broadened through the adoption of more far-reaching refugee definitions in instruments adopted at the regional level. As we have also seen, a series of General Assembly resolutions have enable the High Commissioner to assist groups of persons defined according to extended criteria. Broader concepts of this kind have also been included in the legislation of various countries in different forms, e.g. B status, or humanitarian asylum. This legislation accords certain rights with regard to entry and stay for persons who have valid reasons for leaving their country of origin due to the political or security situation prevailing there, but who cannot establish a “well-founded fear of persecution” under the Convention definition. The legal status enjoyed by such persons is generally less favourable than that provided for refugees by the 1951 Convention and the 1967 Protocol.

Chapter 3 Review

1

The Convention definition of a refugee includes four basic conditions.

What are they?



2 The exclusion clauses define persons to whom the Convention may not apply.

They include:

- a person benefitting from the same rights and obligations as nationals of the country in which he has taken residence;
- a person who has committed a serious, common law crime or an act contrary to the purposes and principles of the United Nations;
- a person receiving protection or assistance from organs or agencies of the UN other than UNHCR.

There is a third category.

What is it?



3 The OAU Convention gives a broader definition than the 1951 Convention.

What does it include?



4 An important Declaration, with provisions similar to those of the OAU Convention, was signed in Latin America in 1984.

What is its name?



5 In emergency situations, in which individual screening is not feasible, a group approach may be adopted

What is the name given to this determination procedure?



6 UNHCR's protection responsibilities always cease, as soon as refugees return voluntarily to the country of origin.

TRUE • FALSE

Which is the correct answer?

Chapter 4 Refugees and human rights

In this Chapter you will learn:

- to identify the major international instruments in the field of human rights;
- to assess their importance in terms of the international protection of refugees.

“...the United Nations shall promote: universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion”. (Article 55)

This quotation from the United Nations Charter reminds us of the close link between UNHCR's functions and the broader context of human rights. This link is confirmed, moreover, in the Preamble to the 1951 Refugee Convention, which makes reference to the principle that all human beings shall enjoy fundamental rights and freedoms without discrimination. The Preamble also recalls that the United Nations has, on various occasions, manifested its profound concern for refugees and endeavoured to assure refugees the widest possible exercise of these fundamental rights and freedoms.

1. Universal human rights instruments

In an earlier chapter, we examined various legal texts of direct, or indirect relevance to the protection of refugees. To these must be added a number of human rights instruments.

The protection of human rights has been an issue of major concern to the international community since the tragedy of the Second World War. It has been perceived as an essential condition of promoting and maintaining international peace and progress, in accordance with the aims of the United Nations.

Major human rights instruments with which you should be familiar are as follows:

Universal Declaration of human rights

This was adopted and proclaimed by the United Nations in December 1948. It was a declaration of intent with no binding effect. Yet its adoption was of capital importance, as the first occasion on which the organized community of nations had set a code of conduct for the protection of basic human rights and fundamental freedoms to which all men and women, everywhere in the world, are entitled without any discrimination.

It is worth recalling the essential contents:

“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”. (Article 1)

“The enjoyment of human rights and fundamental freedoms forbids distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”. (Article 2)

“The basic rights are the right to life, liberty and security of person”. (Article 3)

Civil and political rights are specified in Articles 4 to 21; Articles 13, 14 and 15 are of special relevance to refugees and asylum seekers. They concern respectively the right to freedom of movement and residence, the right to seek and enjoy asylum, and the right to nationality.

Economic, social and cultural rights are referred to in Articles 22 to 27.

International Covenants on human rights (December 1966)

These Covenants concern respectively:

- Civil and Political Rights.
- Economic, Social and Cultural Rights.

The *Optional Protocol* to this Covenant enabled the Human Rights Committee (established under the Covenant on Civil and Political Rights) to receive and consider communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant.

Both Covenants (as well as the Optional Protocol) entered into force in 1976. Together with the Declaration, they formed the *International Bill of Human Rights*.

Their significance

The coming into force of the Covenants meant that States accepted by treaty a *legal*, and no longer simply a moral obligation, to promote and protect human rights and fundamental freedoms.

International Convention on the elimination of all forms of racial discrimination (1965)

This Convention was significant in that it defined racial discrimination as being:

...“any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life”. (Article 1.1)

UN Convention against torture and other cruel, inhuman or degrading treatment or punishment (1984)

defined torture as follows:

...“any act by which severe pain and suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incident to lawful sanctions”. (Article 1)

The Convention extends the principle of *non-refoulement* and non-extradition to any State

...“where there are substantial grounds for believing that (the person returned) would be in danger of being subjected to torture. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights”. (Article 3).

UN convention on the elimination of all forms of discrimination against women (1979)

contains a series of provisions for the benefit of women. It is considered to constitute a corner stone for the protection of refugee women.

UN convention on the rights of the child (1989) makes special provision for refugee children.

Article 22 of this Convention stipulates that

...“States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee...shall...receive appropriate protection and humanitarian assistance...”.

It also contains specific measures for this purpose.

2. The Human Rights Machinery

Parallel to the adoption of such human rights instruments, international machinery has been set up to oversee implementation. This machinery is complex, consisting of a number of general and specialized bodies.

- **Commission on Human Rights**, set up by the Economic and Social Council in 1946. It meets annually and deals with any matter relating to human rights. It is composed of 53 Member States elected for three-year terms. The Commission makes studies, prepares recommendations and drafts international instruments relating to human rights. It also undertakes special tasks assigned to it by the General Assembly or ECOSOC, including the investigation of allegations concerning violations of human rights.
- To assist in its work, the Commission has established a number of subsidiary bodies, including **the Sub-Commission on Prevention of Discrimination and Protection of Minorities**, created in 1947 and composed of 26 experts elected by the Commission to serve in a personal capacity for four-year periods. It meets annually, and is assisted by specialized Working Groups. The Sub-Commission undertakes studies in the light of the Universal Declaration, and makes recommendations to the Commission.
- **Commission on the Status of Women**, established by ECOSOC in 1946 to promote women's rights and to help implement the principle of equal rights with men. It is composed of 32 Member States, elected for four-year terms, who meet every two years to prepare their recommendations to ECOSOC.
- **Human Rights Committee**, established in 1976 under Article 28 of the International Covenant on Civil and Political Rights. It consists of 18 members of high moral character and competence in the field of human rights, elected by States parties. Its main task is to study reports on the measures adopted by States parties to give effect to the rights recognized in the Covenant. Under the Optional Protocol to the Covenant, the Committee may receive written communications from individuals claiming violation of any of their rights, as enumerated in the Covenant.
- **Committee against Torture**, established in 1987 under Article 17 of the Convention against Torture. It consists of 10 experts of high moral character and competence in the field of human rights, elected by States parties. It studies reports on measures taken by States parties to give effect to their undertakings under the Convention, makes confidential enquiries, and examines communications from or on behalf of individuals.
- **Committee on Economic, Social and Cultural Rights**, established in 1985 by ECOSOC, is composed of 18 experts, elected by States parties for a four-year term. The Committee carries out functions relating to the implementation of the Covenant.
- **Committee on the Elimination of Racial Discrimination**, established in 1970 under Article 8 of the International Convention on the Elimination of All Forms of Racial Discrimination. It consists of 18 experts elected by States parties to the Convention. The Committee considers reports on measures adopted by States parties to give effect to the provisions of the Convention.

3. Regional instruments on Human Rights

These embody legal commitments by States in a regional context, and are an important addition to the universal human rights structure.

The most significant are as follows:

- European Convention for the Protection of Human Rights and Fundamental Freedoms (1950).
- European Convention (1987) for the prevention of torture and inhuman or degrading treatment or punishment.
- African Charter on Human and Peoples' Rights (1981).
- American Convention on Human Rights (1969).

The regional human rights instruments also have machinery to oversee their implementation. An example is the **European Commission of Human Rights** in Strasbourg, which is empowered to receive complaints from individuals.

4. Human Rights and refugees

Now that we have briefly reviewed the major human rights instruments, we must answer the question: what contribution can they make to the protection of refugees?

The answer has several facets.

□ Human rights apply to all

Basic human rights apply universally. They benefit everyone: nationals, foreigners, refugees and asylum-seekers, whether lawfully or unlawfully in the territory of a State. Derogation is permitted only in very exceptional circumstances, and even then, as explained later, certain human rights cannot be derogated.

Human rights are of special importance to refugees, who have become refugees through the disregard of human rights in their country of origin, and whose situation is particularly vulnerable. It is therefore necessary to ensure that refugees in their country of temporary or permanent asylum are treated in accordance with accepted basic standards. *Action to ensure that such standards are effectively observed is action in the field of human rights.* It is also necessary to ensure that human rights are restored in the refugee's country of origin, in order that voluntary repatriation can be a realistic and viable solution, and to obviate the need for further departure.

□ Notion of persecution

You will recall that refugee status is linked to "a well-founded fear of persecution" on a number of grounds. Yet the notion of persecution is not defined in the 1951 Convention, nor in any other refugee instrument. The human rights context is of particular relevance in this connection, since action in disregard of human rights can provide concrete examples of what persecution may involve.

Persecution harms the integrity and inherent dignity of the human being, to a degree unacceptable under international standards.

Non-derogable rights

These are listed in the Universal Declaration. They include:

- right to life, liberty and security of person;
- freedom from torture, or cruel, inhuman or degrading treatment or punishment;
- freedom from slavery or servitude;
- recognition as a person before the law;
- freedom of thought, conscience, and religion;
- freedom from arbitrary arrest and detention;

- freedom from arbitrary interference in privacy, home and family.

The violation of these human rights amounts to persecution if it is of such a character as to render the person's continued stay in the home country intolerable. In order to sustain a claim to refugee status, the violation or anticipated violation must be for one of the reasons mentioned in the refugee definition (see Chapter 3).

Article 3 of the UN Convention against torture, as well as Article 3 of the European Convention on Human Rights are of particular relevance in the context of intended deportation.

❑ **Asylum as a fundamental human right**

"Everyone has the right to seek and to enjoy in other countries asylum from persecution"

(Universal Declaration of Human Rights, Article 14).

The granting of asylum is an act of State sovereignty and cannot give rise to legal objections by another State. It is also a peaceful and humanitarian act and is not to be regarded as unfriendly by any State, notably the refugee's State of origin.

For the refugee, being granted asylum implies protection against *refoulement* and the possibility of remaining in the territory either permanently or until an alternative solution is found. It is thus the cornerstone of international protection.

Violations of this right occur when:

- refugees are rejected at the frontier when they have no possibility of seeking asylum elsewhere;
- refugees are forcibly returned to their country of origin or to any other country where they may fear persecution;
- persons arriving by boat are pushed off from the shore and exposed to serious danger as a result.

These and other examples remind us that the protection of refugees is not a theoretical exercise, but a real-life task. This leads us now to the final, and most important chapter of the module. *It concerns how the theory translates to reality.*

Chapter 4 Review

1 The Universal Declaration of Human Rights defines human rights and fundamental freedoms. Articles 13, 14 and 15 concern rights of special interest to refugees.

What are they?



2 The International Bill of Human Rights that came into force in 1976 consists of several instruments.

What are they?



3 What was the significance of the entry into force of the Human Rights Covenants?



4 Where can you find a definition of torture?



5 The human rights machinery comprises a number of general and specialized bodies. This text mentions seven.

List as many as you can remember.



Chapter 5 Practical protection

In this Chapter you will learn some practical aspects of:

- protecting individual refugees;
- promoting the physical safety of refugees;
- facilitating voluntary repatriation;
- helping to resettle;
- promoting international refugee law;
- broader protection functions.

In this chapter, we shall be looking at some practical examples of the protection of refugees. These are sub-divided under six broad headings. Some of these tasks, as you will see, are the direct responsibility of protection staff, while many others involve action in a far wider context. For it is a mistake to consider protection only as a strictly legal function. Protecting refugees is a collective task that concerns us all. It is also a mistake to consider that protection is isolated from assistance. Many of the examples you will find below show their close links.

In normal circumstances, it is the State's responsibility to protect its citizens. In the case of a refugee, this bond has been broken. A refugee is an alien within the community in which he seeks refuge. The international community, by adopting the legal instruments we have considered in earlier chapters of this module, has demonstrated a will to substitute for this broken bond. It has done this by offering guarantees of minimum accepted standards of treatment, as defined in these instruments.

The High Commissioner is entrusted under the Statute with the task of ensuring that individual refugees are treated in accordance with these minimum standards. Article 35 of the 1951 Convention also confers upon the High Commissioner the duty of supervising the application of the provisions of the

Convention.

In practical terms, this task includes:

❑ **Seeking to prevent “refoulement”**

The danger of “refoulement”, and of the dramatic consequences it may have for the individual, demands constant vigilance. The cases that occur are frequently those of refugees who have not yet received formal recognition under an established procedure, although they may fulfil the criteria of refugee status. It is UNHCR’s responsibility to intervene with national authorities in instances where refoulement is being contemplated by the authorities. In the most extreme cases, this action may make the difference between life and death.

The same may apply to cases of expulsion, deportation and extradition.

Articles 31 and 33 of the 1951 Convention, as well as Article II, Para. 3 of the 1969 OAU Convention contain provisions that are designed to protect refugees against *refoulement*.

Article 31.1 of the Convention makes allowance for the fact that individual refugees may not be able to meet normal entry requirements because of their flight, and should not therefore be treated as normal aliens entering the country. This is intended as a safeguard against deportation or *refoulement* before formal recognition may be given.

There have been cases of misrepresentation of this article by magistrates. Penalties for illegal entry should not be imposed on refugees provided:

- they come directly from the country in which their security was threatened;
- and
- they present themselves without delay to the competent authorities.

Note: both conditions should be interpreted liberally. Transit in one or more countries en route should not be a disqualifying factor. Likewise, a reasonable period of time should be accepted to allow the refugee to identify the competent authorities for an asylum claim.

❑ **Assisting in the processing of asylum applications**

In many countries, UNHCR co-operates with the national authorities in procedures that concern the determination of refugee status in the context of asylum. In some cases, UNHCR is entrusted with the entire determination procedure. It is important to know what standards should be applied in both cases. You will find details in the training module on Determination of refugee Status (RLD 2, Chapter 2). Here, in summary, are the questions to formulate as a test of basic guarantees of fairness for an asylum seeker:

- does he/she have access to a determination procedure?
- has the asylum-seeker been given the opportunity to contact UNHCR?
- is enough time being given for the asylum request to be prepared?
- is the interview conducted by a qualified official?
- is there an appeal mechanism in case of negative decision in the first instance?
- is the appeal handled by another person(s), to ensure objectivity?
- have appropriate arrangements been made for neutral and qualified interpretation?

- does UNHCR have full access to information on the asylum-seeker, and to the proceedings?
- is there a qualified female interviewer if the asylum-seeker is a woman?
- what arrangements have been made for interviewing unaccompanied minors?

☐ **Providing legal counsel and/or legal aid**

Refugees are frequently in need of legal assistance in order to draw effective benefit from the rights accorded to them in international legal instruments or national legislation. This assistance may be limited to qualified legal advice, or it may involve the services of a lawyer to represent them in legal proceedings. Here are a few examples of issues for which such assistance may be needed:

- asylum procedures (including admission at the border, especially at airports);
- detention;
- restrictions on freedom of movement;
- the issue of identity, travel and other documents;
- access to naturalization;
- civil, political and economic rights;
- statelessness.

2. Promoting arrangements for the physical safety of refugees

As mentioned earlier, international protection normally means seeking to secure that refugees are treated in accordance with international standards. Dramatic situations may, however, call for specific action to ensure the physical protection of refugees, particularly those living in closed camps where refugees may need protection from cases of physical abuse from other inmates or the camp management. Such problems are compounded when the authorities are reluctant to bring offenders to justice. The examples given below demonstrate what kind of action may be called for.

☐ **Asylum seekers in distress at sea**

The fate of Indo-Chinese boat people putting out to sea in frail, unseaworthy vessels, has been one of the most distressing of recent years. These people have faced not only natural dangers, but assaults from pirates, and even been pushed back to sea when attempting to land on certain shores.

Action to assist them has included:

- appeals to shipmasters to take them on board;
- arrangement to ensure temporary asylum and resettlement places;
- an Anti-Piracy Arrangement, involving sea and air patrolling, and land-based prevention and suppression efforts, implemented by the authorities of Thailand;
- co-operation with the International Maritime Organization in identifying joint action.

☐ **Military or armed attacks on refugee camps and settlements**

Untold human misery can be caused through unlawful attacks on refugees and asylum-seekers in camps in different areas of the world. Such attacks, when they occur, are usually the work of armed forces or terrorist

gangs, heedless of the civilian and humanitarian character of the camps.

Action in such circumstances is usually preventive:

- working closely with the international community so as to obtain assurances or guarantees from the concerned parties that the lives and security of refugees in camps are respected;
- ensuring that the refugee camps and settlement are located at a reasonable distance from the frontier;
- demanding access by UNHCR staff;
- reminding national authorities of their responsibility to provide protection and security to refugees, and taking appropriate action if necessary;
- reminding the refugees of their duties to abstain from any activity which would be contrary to the civilian and humanitarian character of the camp.

Forced recruitment

This phenomenon may affect young male refugees and unaccompanied minors. It is yet another example of lawless action by armed groups, guerrilla bands or, in some cases, regular armies. Action of the kind described above is also appropriate here, by way of prevention.

Mistreatment of refugees and asylum seekers

This usually occurs in a camp situation where unscrupulous officials may exploit refugees. In some instances asylum-seekers are mistreated by local officials upon arrival.

It is important:

- that UNHCR has early and free access to asylum seekers immediately after arrival and, to the extent possible, a presence in refugee camps;
- when a refugee or asylum seeker has been mistreated, legal redress should be pursued and culprits should be dealt with in accordance with the local laws. If appropriate, the advice and help of local lawyers may be sought.

Acts of violence against refugee women

It should not be forgotten that a large proportion of the world's refugees are women. Their situation is particularly vulnerable. Cases of physical and sexual abuse are all too frequent.

Guidelines on the protection of refugee women are available. They cover protection needs and responses, including those of physical security (Section III).

Preventive measures should start at the planning stage. A refugee camp or settlement can be organized in such a way as to allow women maximum protection, for example:

- appropriate lighting;
- allowing the women as much privacy as possible;
- asking them for their own ideas as to how to organize their life as safely as possible.

Action when abuses are known (or suspected) to have occurred must include:

- ensuring that the persons responsible are identified and prosecuted;

- protecting the victims from reprisals;
- providing appropriate counselling and medical care for victims of abuse.

As we have seen in an earlier chapter, many of these issues have been the subject of Conclusions adopted by the Executive Committee, with recommendations as to the appropriate action to be taken. It is UNHCR's responsibility to maintain close contact with national authorities concerned, and to ensure that such recommendations are given full effect.

3. Promoting and assisting voluntary repatriation

According to the Statute, the promotion of voluntary repatriation is an essential aspect of the international protection function. It is also the most desirable solution for refugee problems.

Repatriation of individual refugees

UNHCR's action in facilitating the repatriation of individual refugees wishing to return to their country of origin consists of ensuring:

- that they receive *all information* relevant to their choice;
- that the decision is taken *freely* and in the absence of pressure of any kind. It is a rule to ask the refugee to sign a declaration to this effect, in the presence of a UNHCR officer;
- that they are issued with the necessary travel documents, and if necessary receive financial assistance to cover travel costs.

Large-scale voluntary repatriation

Involvement in large-scale voluntary repatriation movements has been an important feature of UNHCR's activities in recent years. Support has been formally expressed by the Executive Committee in its Conclusions 18 and 40.

Large-scale voluntary repatriation movements may be organized or spontaneous. They have mainly involved refugees in Central America, Africa and South-West Asia.

Although action to promote and facilitate each of these movements has depended on individual circumstances, UNHCR's role is based on certain guiding principles that are common to all. It is summarized in broad terms as follows:

- **Establishing a dialogue** between the main parties involved. Creating conditions that are conducive to voluntary repatriation is the responsibility of States. However, UNHCR has an important role to play not only as an intermediary or channel of communication, but by actively promoting dialogue. This dialogue frequently takes place within the framework of tripartite commissions, consisting of the countries of origin and asylum and UNHCR. Their task is to provide an opportunity for joint planning and implementation of the return movement. It is essential that the refugees themselves are associated with this work as from an early stage.
- **Providing the refugees with full information** regarding the situation in their home country. Representatives of the refugees may need to be given the opportunity to make personal visits to the home country, without losing their refugee status, before reaching the decision to return.
- **Ensuring that the return is voluntary.** The repatriation may only take place at the freely expressed wish of the refugees themselves. This requires meeting with the refugees considering return, talking to them about their decision, and requesting written confirmation that it has been reached voluntarily, and with full awareness of the conditions they will find in the country of origin.

- **Making special arrangements to monitor the movements**, such as ensuring the presence of independent observers at crossing points; establishing mechanisms through which to communicate with representatives of the refugees.
- **Facilitating the return** by organizing transport and reception facilities; supervising the issue of entry papers; providing limited assistance following the return.
- **Monitoring the situation after the return has taken place** to ensure the fulfilment of amnesties, guarantees or assurances that had been provided by the government of the country of origin. This implies direct and unhindered access by UNHCR to the returnees.
- **Assisting towards re-integration** in co-ordination with other UN agencies, such as the World Bank and UNDP which are responsible for development aid projects (UNHCR's role being limited to relief assistance immediately following the return).

4. Helping refugees to resettle

If neither voluntary repatriation nor settlement in the first asylum country is possible, resettlement in another country may offer an alternative durable solution.¹⁽⁴⁾

Resettlement linked to legal and/or physical protection

Such cases can be dramatic. The offer of a secure place and rapid transport may mean the difference between life and death. They can include refugees threatened by pursuit by agents from the home country; cases facing *refoulement*.

Resettlement as a form of humanitarian protection

The following categories of refugees may be in need of

resettlement on humanitarian grounds:

- women at risk;
- victims of torture/violence;
- physically or mentally disabled cases;
- medical cases for whom appropriate care is not available in the country of asylum;
- longstayers with no prospect of a tenable existence in their current surroundings.

Reunion of families

The right to be reunited with one's close family is a basic human right. Resettlement of refugees frequently involves the reunion of refugee families in countries where part of the family nucleus has already been admitted. As such, it is an application of that human right.

Sharing the burden of asylum

Many of the countries of asylum are in the developing world. The presence of refugees places new demands on their scant resources. Resettlement relieves this strain, and demonstrates an international solidarity that also helps to alleviate tensions between receiving countries and the countries of origin.

5. Promoting international refugee law

Chapter 2 of this module gave a brief introduction to international refugee law, drawing attention to the importance of the 1951 Convention and 1967 Protocol Relating to the Status of refugees, and making

reference to other international instruments of concern to the protection of refugees.

UNHCR not only seeks to ensure that refugees are treated in accordance with accepted international standards, but also plays an active role in the *development* of these standards. This entails action:

- ❑ to encourage the adoption of international instruments that define minimum standards of treatment of refugees;
- ❑ to promote new accessions to the 1951 Convention and 1967 Protocol relating to the Status of Refugees, as prescribed in the Statute, and to other international instruments;
- ❑ to help ensure the effective implementation of such instruments by encouraging States to adjust their national legislation and administrative procedures, as required.

This important action is undertaken

- through international fora: UN General Assembly, ECOSOC, Executive Committee, Regional bodies (OAU, OAS, League of Arab States, Council of Europe);
- at national level, through contacts between Field Offices and authorities;
- through public opinion (using scientific and research institutes, NGO's and the media).

6. Broader protection functions

The effective exercise of the international protection function is supported by a number of other activities of the Office, which should now be mentioned to complete the picture.

Documentation and research

Good protection requires good information. It is needed in virtually all situations that concern the protection of refugees, for example:

- to assess the well-foundedness of individual claims to protection, and to present cases effectively to national authorities;
- to appraise existing policies and practices with a view to their improvement.

The Centre for Documentation on Refugees (CDR), maintained at Headquarters, is designed:

- to provide information support to UNHCR staff by making available documentation, references and advice concerning the causes, flight, reception of refugees (protection and assistance) and durable solutions;
- to provide documentary information to outside users (governments, other intergovernmental organizations, non-governmental organizations, individual researchers);
- to co-ordinate a worldwide network of information and documentation centres and databases.

Co-operation with other UN agencies and regional organizations

This co-operation has already been mentioned with respect to the promotion of refugee law. Another area for which this form of co-operation plays an important role is that of human rights (see Chapter 4).

In countries where UNHCR has no field office, it is normally represented by the United Nations Development Programme (UNDP), which thus also acts on behalf of the Office in protection matters.

Co-operation with non-governmental organizations (NGO's)

This co-operation is essential to the effective exercise of international protection. NGO's dealing with refugee matters are in direct, daily contact with refugees. Their assistance is particularly vital in three areas:

- the sharing of information. It is most frequently a local NGO that alerts UNHCR to a threat of *refoulement* by the authorities, or of any other treatment that is incompatible with accepted international standards;
- specific protection activities, such as legal advice and representation, may be provided through NGO lawyers' associations;
- advocacy of refugee rights. Here again, the non-governmental organizations play a powerful role in sensitizing the media, public opinion and governments to the plight of refugees, and to the fundamental human rights that are at issue.

Of the many hundreds of NGO's with which UNHCR co-operates, those particularly concerned with protection issues include:

- ❑ European Consultation on Refugees and Exiles (ECRE) – a forum for a wide range of European NGO's. Linked to ECRE is the European Legal Network on Asylum (ELENA).
- ❑ European Churches' Working Group on Asylum and Refugees.
- ❑ An umbrella organization that groups many NGO's affiliated to churches in Europe.
- ❑ Amnesty International, which continues to play a prominent role in denouncing abuses of human rights, and provides through its annual reports country of origin information that is of direct interest to UNHCR.
- ❑ International Helsinki Federation for Human Rights – an umbrella organization covering a number of watchdog committees in Eastern Europe.
- ❑ Human Rights Watch – a similar umbrella organization covering associations that are active in Africa, Asia and the America's.

Co-operation with scientific and research institutes

UNHCR maintains close contact with various scientific and research institutions as part of its activities for the promotion of refugee law. The Office also helps to organize and regularly participates in seminars at which protection issues are discussed. From the standpoint of the development of refugee law, such exchanges of ideas are particularly valuable.

Training activities

In recent years, training events on protection/refugee law have become a regular feature of UNHCR's promotion activities worldwide. They are organized at international, regional and national levels and may take the form of seminars, courses, round-tables and conferences.

These events are organized for the benefit of government officials (including immigration and border officials), non-governmental organizations working in the refugee field, as well as UNHCR staff. They concern the whole range of subjects treated in this module, from international instruments, to human rights and the physical safety of refugees.

Depending upon the audience, these activities serve a number of important objectives:

- to sensitize persons dealing with refugees to the fundamental issues involved, and promote an

effective dialogue;

- to provide practical knowledge and skills;
- to disseminate knowledge of the laws and principles governing the protection of refugees and the proper recognition of their rights.

Case study 1

Two refugees have fled Nari fearing persecution on political grounds. They intended to seek asylum in Sinada because of family ties there. En route to Sinada they had a transit stay in Itaka of six hours.

The Sinada Directorate for Aliens decided to expel the asylum-seekers to Itaka, claiming it was the country of first asylum because of the stop-over. The Refugee Council in Sinada approached the UNHCR Branch Office in Itaka which stated that in their opinion the asylum-seekers would be sent on from Itaka to Tosnia if expelled from Sinada. The Branch Office emphasized that Itaka would consider Tosnia to be the country of first asylum.

Although the Sinada Directorate for Aliens was informed of UNHCR's assessment of the case, it maintained its decision, stating that in their opinion Itaka would be willing to admit the asylum-seekers.

UNHCR in Itaka was informed of the intention to expel the asylum-seekers from Sinada to Itaka, and informed the Branch Office in Tosnia of the flight departures from Itaka to Tosnia that the Italian authorities were likely to use.

You are the Protection Officer in Tosnia. What action would you take?

Case study 2

Political unrest and civil warfare in a country X has led to an exodus into a neighbouring country. Most of those fleeing the combat are women and children. The local population extend their hospitality to the refugees, who are of the same ethnic group. With some delay, UNHCR sends a mission to assess the situation, and offer assistance to the local authorities.

By the time the mission gets down to work, it finds that the situation is less serious than might have been feared and that the refugees are all accommodated thanks to the generous response of the local population. It is decided not to build a camp for the refugees, but to provide them with assistance by means of a distribution of food supplies to each local head of household.

Time passes, and hopes fade for a rapid political settlement which would allow the refugees to return home. The food distribution seems to be functioning well, although rations have decreased since resources for the operation are by now drying up.

To satisfy a donor request, a survey is carried out to determine the health and nutrition status of the refugee population. Interviews are organized with a cross-section of the refugees. Most are in good health, but a disturbing number are reluctant to respond to questions. Further probing reveals that many of the women have become concubines of household heads, in return for food.

What lessons can be learned from this, from a protection point of view?

Case study 3 (Resettlement)

You work in the UNHCR Branch Office in Trotskey. Although a party to the 1951 Convention, Trotskey imposes a geographical limitation. This means that refugees of non-European origin are admitted to the country on a temporary basis only. Each year requests for resettlement are filed by a large number of non-European refugees.

This is a typical example:

Chan Lal originates from Rahik. He is a single male, aged 30 years. He tells the following story:

“Immediately after I completed High School in 1976, I was conscripted. In 1980 with the outbreak of war against neighbouring Rohan I was constantly sent to serve in the frontline, which was the experience of others who belonged to the same ethnic minority. The war was being prolonged without an end in sight and I could not see myself coming out alive. In 1984 I decided to join the armed resistance movement (ARM) which was taking advantage of the distraction of the Rahik-Rohan war to consolidate regional bases in the North, in the hope of overthrowing the dictatorial government. In mid 1987 the Government launched a savage attack against ARM. Many of us were forced further north into virtual captivity until we were forced to give up our ideas of achieving our goal. With 6 others, I crossed the border through Rysa to safety in Troskey in 1990.

Today my safety in Troskey is not assured. Although Troskey is party to the 1951 Convention, this is with the geographical limitation. Therefore, rather than being a country of asylum, Troskey wishes to be identified as a country of transit. Those persons recognized by UNHCR as refugees are allowed to remain temporarily pending a resettlement solution”.

You help him to complete the standard resettlement registration form. In addition to basic bio-data:

- What essential information do you make sure that he includes?
- What other information is necessary before this request may be processed for submission to a possible country of resettlement?

Case study 4 (Voluntary Repatriation)

Following years of totalitarian régime, democracy has come at last to the Republic of Outlandia. You are Protection Officer in a distant country where a number of Outlandian citizens had been admitted as refugees during the years of cruel repression. The majority have, by now, integrated successfully with the local population. They have found employment, their children are educated in national schools, and there have been cases of marriages between refugees and nationals.

Some of the refugees, however, have sought to maintain links with their roots, particularly among the older generation. With the coming of democracy, they have only one dream – to return to their birthplace. They have learned that they may benefit from assistance to return, and apply to the Branch Office.

What specific information do you ask from such individuals, for transmission to headquarters?

Answer Key

Chapter 1 Review

- 1** These arrangements concerned:
 - specific refugee groups.They were:
 - non binding.
- 2** United Nations Relief and Rehabilitation Administration (UNRRA).
- 3** The IRO was created in 1947. It was the first international agency to deal comprehensively with

every aspect of refugee problems.

4 The IRO was authorized to assist:

both categories.

5 The missing words are:

“providing international protection seeking permanent solutions”.

Chapter 2 Review

1 They define basic standards for the treatment of refugees.

2 The limitations were:

1951 dateline;

geographical limitation (events occurring in Europe before 1951).

3 The 1951 dateline was removed by the 1967 Protocol.

4 False.

5 The missing Articles are:

Article 1 (refugee definition);

Article 33 (*non-refoulement*).

6 These conclusions serve to:

focus attention on protection issues;

reflect an international consensus;

guide the action of governmental authorities.

Chapter 3 Review

1 The four basic conditions are that the applicant must:

be outside his/her country of origin;

have a well-founded fear of persecution;

based on one of five grounds (race, religion, nationality, social group, political opinion);

be unable or unwilling to avail him/herself of the protection of the country of origin.

2 The third category is that of a person already receiving protection or assistance from other organs or agencies of the UN.

3 The OAU Convention definition includes persons compelled to leave “owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part of the whole of his country of origin or nationality”

4 The Cartagena Declaration.

5 Prima facie determination.

6 False.
(UNHCR may have a monitoring role for a limited period).

Chapter 4 Review

1 These Articles concern the right to freedom of movement and residence; the right to seek and enjoy asylum; the right to nationality.

2 International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights, Optional Protocol.

3 States accepted a legal obligation to promote and protect human rights and fundamental freedoms.

4 A definition of torture is contained in the UN Convention against torture and other cruel, inhuman or degrading treatment or punishment (1984).

5 This machinery includes:

Commission on Human Rights; Sub-Commission on Prevention of Discrimination and Protection of Minorities; Commission on the Status of Women; Human Rights Committee; Committee against Torture; Committee on Economic, Social and Cultural Rights.

Analysis of case studies

Case study 1

As Protection Officer, your first reference must be the existing legal framework. In this case it is as follows:

- Both Sinada and Itaka are signatories to the 1951 Convention and 1967 Protocol. Until recently, Itaka had imposed a geographical reservation which excluded non-European asylum-seekers from applying for refugee status. However, this reservation no longer applies.
- Tosnia is also a party to the 1951 Convention, but maintains a geographical reservation which it could invoke here. The action you may decide is as follows:
- Send telex to RO Sinada, with copies to BO Itaka and to Headquarters (attention of Regional Legal Adviser, Bureau for Utopia), requesting urgent intervention with Sinada authorities,

especially in view of family ties. Insist on problems faced by asylum seekers if sent back to Bosnia:

- risk of refoulement to country of origin because of geographical limitation;
 - risk of rejection at border/airport;
 - possible sanctions (detention) as illegal entrants.
- (As a parallel action) urge BO Itaka to intervene with Government to admit asylum seekers for the same reasons, in case Sinada does not respond favourably to UNHCR's request.
 - established by BO Sinada. These arrangements should include contacts with local implementing partner to provide for immediate material needs if necessary.
 - In any event, determine the flight on which the refugees will be transported to Bosnia, and make sure that you (or a colleague) are present at the airport.

Case study 2

From a protection point of view, this case study demonstrates two important issues that frequently characterize refugee situations. They are as follows:

- The vulnerable situation of women in refugee situations. Deprived of their traditional family structures, they lack the natural protection afforded by fathers, brothers or husbands.
- The link between assistance and protection.

Preventive measures in this case might have included:

- (i) Establishing a distribution system in which women did not find themselves at risk of having to give sexual favours in return for food. The refugee women, rather than the local heads of household should have been the recipients of the rations. Close monitoring is also essential of whatever system is applied.
- (ii) Encourage the appointment of women's representatives at an early stage of the assistance programme, to convey their concerns and protect their safety.

Case study 3

The UNHCR resettlement registration form is designed to provide the essential information required for processing an application. Always make sure that:

- Every box is carefully completed with accurate, up-to-date information.
- The statement of events and reasons leading to departure is as detailed as possible. Ask for additional explanations if there are gaps or inconsistencies.

The resettlement registration form should be accompanied by an up-to-date synopsis of information on the country of origin.

All relevant information on resettlement procedures (including those in favour of vulnerable groups) is contained in the Resettlement Guidelines, issued and periodically updated at Headquarters.

Case study 4

When submitting your request to Headquarters, you will need to provide explicit supporting information. The following checklist (contained in UNHCR/IOM/35/92-FOM/36/92) sets out the main elements:

- Name, sex, date of birth/place of birth, nationality of IC and family members, final destination;
- confirmation that applicant has been recognized as a refugee or person of concern to UNHCR;
- confirmation that IC has completed/signed the declaration of voluntary repatriation;
- confirmation that IC has obtained valid travel document/return clearance, with details (nature of travel document, issuing authorities, period of validity, etc.);
- confirmation that IC is unable to pay travel costs and no other funding is available;
- estimated cost of transportation by most direct and economical route (with details) at IOM's preferential rate whenever applicable;
- recommended repatriation grant and/or travel allowance.

Endnotes

1 Resolution 319 (IV) A, 3 December 1949

1 Reservations to Articles 36-46 are permitted under the Protocol.

1 This reason is not included in the Statute definition.

1 See Resettlement Guidelines